

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Study Session

September 8, 2009
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Degginger, Deputy Mayor Balducci, and Councilmembers Bonincontri, Chelminiak¹, Creighton, Davidson, and Lee

ABSENT: None.

1. Executive Session

Deputy Mayor Balducci opened the meeting at 6:00 p.m. and declared recess to Executive Session for approximately 10 minutes to discuss one item of potential litigation.

The Study Session resumed at 6:20 p.m., with Mayor Degginger presiding.

2. Study Session

(a) Review of Arts Commission 2010 Work Plan

City Manager Steve Sarkozy opened discussion regarding the Arts Commission's 2010 Work Plan. The allocation plan for both Special Projects and Eastside Arts Partnerships funding, which is supported by the General Fund, was approved by the Council in July. Tonight's discussion focuses on projects funded through the Capital Investment Program (CIP) Plan or those that can be accomplished without funding.

Bill Ptacek, Arts Commission, reviewed the 2010 Arts Commission Work Plan which identifies priority projects to be implemented during 2009-2010 that are consistent with the Cultural Compass. The projects also address the Public Art Strategic Initiatives approved by the Council in 2007 to develop an art walk from City Hall to the waterfront, encourage developers to include more public art in their projects, and engage neighborhoods to work with artists to develop public art projects. Estimated costs of the projects fall within the limits of the City Manager's proposed short-term financial management plan for the CIP. The Council is scheduled to review this short-term CIP Plan during its September 14 meeting.

Mr. Ptacek briefly reviewed the six proposed projects: 1) 2010 Bellevue Sculpture+ Exhibition (an Art Walk of sculpture and other types of art from City Hall to the waterfront), 2) Downtown

¹ Councilmember Chelminiak arrived at 6:10 p.m.

Gateways planning, 3) Downtown Wayfinding Kiosks - Phase Two, and 4) Three neighborhood public art projects in Newport Hills/Lake Heights, Bridle Trails, and Surrey Downs. He explained that the projects listed in the Work Plan are the Commission's priorities. The Work Plan has been pared back to accommodate one less staff person and to be consistent with the City Manager's financial management plan for the Capital Investment Program.

Responding to Councilmember Lee, Mr. Ptacek said the King County Library System has some funding set aside for public art at the new Lake Hills Library to be located at the Lake Hills Shopping Center on 156th Avenue.

Responding to Councilmember Creighton, Arts Specialist Mary Pat Byrne said potential locations for neighborhood public art have been identified in some areas. In Newport Hills, four candidate locations along 119th include two bus shelters. A number of possible sites in Bridle Trails have been mentioned but specific locations have not been formally selected.

Responding to Mayor Degginger, Ms. Byrne provided a brief update on the Newport Hills gateways project. The project began this summer but has been delayed due to design and materials issues. The gateway signs and accompanying landscaping are scheduled for completion this fall.

Deputy Mayor Balducci said she appreciates that the 2010 Work Plan is driven by the Cultural Compass plan. Noting that the Cultural Compass was adopted in 2004 and extends its vision to 2015, Ms. Balducci suggested that staff provide an update later this year as to the progress in implementing the overall plan.

Ms. Balducci noted an email received from a resident about authorities in New York City who are giving away pieces of wreckage from the World Trade Center to various jurisdictions around the country. The resident suggests obtaining and using such an artifact in some type of public art project in Bellevue. Ms. Byrne said she will explore the idea with Parks Department staff.

Mayor Degginger noted general Council support for the 2010 Arts Commission Work Plan. He expressed a strong interest in the proposal for an Art Walk from City Hall through the Pedestrian Corridor to the waterfront.

(b) Update on Cable Franchise Code Amendment and Cable Franchise Negotiations with Broadstripe Cable, Comcast Cable, and Verizon

Mr. Sarkozy opened discussion regarding the Cable Franchise Code amendment and cable franchise negotiations with Broadstripe Cable, Comcast, and Verizon.

Jerome Roaché, Assistant City Attorney, reported that the City has been in negotiations with Verizon for more than a year and an agreement has not been reached. Discussions were put on hold at Verizon's request. Since that time Verizon reached an agreement to sell its assets to Frontier Communications, which is pending approval by the FCC.

Regarding Comcast Cable, Mr. Roaché recalled that in July staff presented a recommendation to the Council to amend and extend the current Comcast Franchise granted under Resolution No. 7040. At that time, Council expressed concerns regarding the definition of gross revenues and directed staff to continue negotiations. Staff is continuing discussions with Comcast and once a satisfactory resolution is reached staff will bring it forward for the Council's consideration.

Broadstripe currently serves approximately 650 subscribers in several multi-dwelling units in the downtown area. During negotiations, Broadstripe indicated that it is not able to comply with the City's build-out requirements. Broadstripe has agreed to wind down its services as specific contracts expire and to discontinue all operations in Bellevue by July 1, 2014.

Mr. Roaché noted the Cable Franchise Code amendment represented by the proposed Ordinance provided in Council's desk packet. He briefly reviewed revisions to the Ordinance, pursuant to Council's concerns, regarding cable franchise service areas and build-out.

Responding to Councilmember Davidson, Franchise Manager David Kerr said the FCC's rules governing cable franchises are weighted toward encouraging new entrants to the cable market. The opportunity for cities to require system build-out is through subsequent franchise renewals.

Mayor Degginger noted that this raises an important point, which is that the City's role in regulating cable franchises is limited.

Responding to Councilmember Chelminiak, Mr. Kerr said Comcast service covers essentially all of Bellevue. However, occasionally the City runs across a private street on which Comcast has not been granted an easement. In further response, Mr. Kerr said Qwest is not currently providing cable service within Bellevue.

Responding to Councilmember Creighton, Mr. Kerr said the City is not involved in regulating satellite television services because the City's authority extends to use of the right-of-way, and satellite providers are not utilizing the right-of-way.

Deputy Mayor Balducci feels it is important to formalize the City's build-out requirement, as stated in the proposed Ordinance. She wants to encourage competition as much as possible. Ms. Balducci expressed support for the revised Ordinance. She noted her interest in ensuring that Broadstripe customers are informed about the pending termination of service and are assisted in transitioning to another cable provider if desired.

Councilmember Lee concurred with this concern about Broadstripe customers. Mr. Kerr said the options for these customers are Comcast, satellite television, and possibly Qwest if it begins to implement service in Bellevue.

Councilmember Bonincontri stated her interest in the City doing what it can to encourage competition. However, she noted that competition by new cable companies might be less relevant than the competition provided by satellite TV services and Internet-based programming.

- (c) Code Amendments for Mandatory National Pollutant Discharge Elimination System (NPDES) and Non-NPDES Code Amendments *[Previously discussed with the Council on March 23, April 13, and April 20, 2009. Council action is scheduled for October 5, 2009.]*

Mr. Sarkozy made introductory comments regarding the National Pollutant Discharge Elimination System (NPDES) and Non-NPDES code amendments. NPDES is a federally mandated program required by the Clean Water Act that was initially administered by the Environmental Protection Agency (EPA). The EPA then designated permit authority to states. The City has been in negotiations with the Washington State Department of Ecology regarding NPDES Phase II permitting requirements.

Denny Vidmar, Utilities Director, introduced Phyllis Varner, NPDES Permit Coordinator, and Tom Campbell, Code Compliance Manager. Mr. Vidmar explained that Bellevue is one of 100 municipalities in Washington required under the Clean Water Act to obtain a NPDES Phase II Municipal Storm Water Permit. The permit program provides a consistent platform for protecting water quality and reducing the discharge of pollutants to the maximum extent practical. It is one tool for the protection and restoration of local streams and wetlands.

Mr. Vidmar said that many of Bellevue's longstanding programs and its tradition of environmental stewardship are consistent with the permit requirements. The permit that became effective in 2007 has a five-year term. Compliance components are phased over the term of the permit with full program implementation required by August 2011. Permits are revised and reissued very five years.

Mr. Vidmar said tonight's discussion is an additional step toward Council adoption of a final Code amendment package in support of NPDES requirements. Council approval is needed by October 5 in order to maintain the timeline for compliance. Most of the Code amendments are required by federal guidelines applicable to new development, redevelopment, and construction stormwater management. However, some discretion is allowed to cities in terms of the stormwater standards to be used and the enforcement approach for illicit discharges.

Mayor Degginger noted the Council's strong support of environmental stewardship measures and programs.

Ms. Varner provided an overview of the permit process to date. She noted that in June the Department of Ecology modified the NPDES permit, changing the adoption date for Code amendments from August to October. The Code package amends the Storm and Surface Water Utility Code, Clearing and Grading Code, and Civil Violations Code. As stated by Mr. Vidmar, the majority of NPDES-related Code amendments are required. However, the City is allowed to choose which Department of Ecology stormwater standards to follow. The Council previously provided direction to staff to follow the 2005 Department of Ecology Manual stormwater standards.

The second area allowing some discretion by the City is whether to implement an escalating enforcement approach for illicit discharges. Illicit discharges are any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater, except permitted discharges and fire fighting related discharges.

Ms. Varner reviewed the City's current and proposed escalating enforcement approach. Both include the steps of education, preventative correction, correction notice, and a stop work order. Staff proposes adding the additional step of issuing a notice of civil violation with a fine of \$1,000 per day. Staff will continue to rely on education and voluntary compliance as the primary compliance approach with homeowners. If corrective actions will take longer than a day, a binding Voluntary Correction Agreement could be entered into to minimize cumulative fines. Staff further recommends developing a citywide enforcement standard operating procedure (SOP) in which only the Code Compliance Manager is authorized to issue notices of violation.

Ms. Varner noted Attachment C in the meeting packet, a draft handout regarding educating homeowners about illicit discharges. Additional Code amendments not related to NPDES requirements include corrections, clarifications, and revisions to provide consistency with existing policies (e.g., Critical Areas Ordinance) and state law.

The Environmental Services Commission held a public meeting on the draft Code amendments on June 4, and three public comments were received. These citizens were concerned about the proposed escalating fine approach. Following discussion, the Commission unanimously concurred with staff's recommended enforcement approach. Some Commissioners requested separate enforcement steps for homeowners and commercial/construction entities, which was endorsed by staff. In addition, staff clarified in the SOP that the City will rely on education and voluntary compliance as the primary approach with homeowners. Staff maintained the \$1,000 per day fine provision and prepared a draft handout of frequently asked questions for single-family residents.

Ms. Varner said that staff is seeking direction to prepare final Ordinances consistent with the proposed Code amendment package for Council adoption on October 5. Alternatively, the Council is asked to suggest modifications and to direct staff to bring the revised amendments to the Council on September 21 for further consideration and discussion.

Responding to Councilmember Chelminiak, Ms. Varner clarified that the \$1,000 fine was suggested by staff. The Department of Ecology outlines escalating enforcement provisions including fines. Councilmember Chelminiak questioned reducing the fine to \$100.

Mr. Campbell explained that the fine is part of an escalating enforcement approach in which several steps occur before a notice of violation is issued. This is consistent with the City's existing civil enforcement approach. Mr. Campbell restated that the proposed Ordinance specifies that City staff shall pursue a reasonable attempt to educate and secure voluntary corrections.

Responding to Councilmember Lee, Mr. Campbell said the amount of the fine appears to matter in terms of enforcement. Other jurisdictions have adopted fines ranging from \$500 to \$5,000. Bellevue staff believe that a \$1,000 per day fine will be effective in encouraging voluntary compliance.

Responding to Councilmember Bonincontri, Ms. Varner said pollutant or illicit discharges are generally reported by citizens to the City. Staff's practice is to track back through the storm drainage system to identify the source. Ms. Varner said construction sites disturbing more than one acre are required to get both a City permit and DOE permit.

Responding to Councilmember Creighton, Ms. Varner described a sample case in which a discharge was initially thought to be due to a sanitary sewer line break. It was ultimately tracked back to a food processing business in a warehouse. The business was required to immediately clean and remove the material, and the DOE was called in because the warehouse was an industrial use that did not have the proper NPDES permit. The business was not fined, and the main focus of the response was corrective action.

Responding to Deputy Mayor Balducci, Ms. Varner confirmed that the City is subject to fines if pollutant discharges occur with capital projects. Ms. Varner said one benefit of the NPDES permit is the development of standard operating procedures to be followed by all City departments.

Responding to Deputy Mayor Balducci, Mr. Campbell said BCC 1.18.075(E) states that voluntary correction shall be required. Staff is developing detailed SOPs and will share them with the Council upon completion. Training has been provided for all city staff in the field who might observe illicit discharges. Additional training will be provided for water quality staff, clear and grade inspectors, and other designated field staff who develop documentation on these cases. All of the documentation is ultimately handled by Code Compliance staff in order to assure the consistency and thoroughness of the documentation. A decision to move forward with enforcement lies partly with the Code Compliance Officer. However, Department Directors are apprised before a notice of violation is issued or a hearing is scheduled.

Deputy Mayor Balducci referenced Attachment D and the Environmental Services Commission's recommendation to consider proportioning the fine or otherwise doing something differently for single-family residential cases. She suggested making it possible for homeowners to appeal a fine to the Hearing Examiner if they feel they have been treated unfairly. The appeal would provide the opportunity to explain specific circumstances and request a fine reduction, similar to what is done in traffic court.

Lacey Madche, Assistant City Attorney, addressed Deputy Mayor Balducci's concerns. Ms. Madche suggested that rather than an appeal mechanism, perhaps Ms. Balducci is interested in a provision in the Ordinance granting authority in the Code for the Hearing Examiner to reduce a fine based on a certain set of circumstances. If the responsible party is not satisfied with the Hearing Examiner's decision, he or she could appeal the matter to Superior Court. Ms. Madche

said staff will add language reflecting this authority for the Hearing Examiner, if desired by the Council.

Councilmember Davidson noted that the Environmental Services Commission unanimously supported the \$1,000 fine as appropriate. However, some Commissioners were interested in allowing a homeowner to pay the fine in multiple installments.

Responding to Councilmember Chelminiak, Mr. Campbell said fines increase with the third repeat violation. Mr. Chelminiak expressed concern that the fine is too high for single-family residents. He questioned enforcement approaches and fines in other jurisdictions.

Councilmember Lee concurred with concerns about the level of the fine, and said he would like staff to conduct further analysis of the issue.

Mayor Degginger summarized Council's request for a list of what other jurisdictions are doing in terms of enforcement. In addition, what are potential mitigating factors that could be offered by the Hearing Examiner in the case of a violation?

Councilmember Davidson emphasized that most discharges associated with a single-family residence are one-time events, and there are several steps in the enforcement approach before a fine would be issued. He observed that a fine is necessary to discourage blatant violations. However, it is unlikely that a case would escalate to the point of a homeowner being fined.

Mayor Degginger asked staff to return to the Council with the additional information requested prior to requesting Council action on October 5.

At 7:56 p.m., Mayor Degginger declared recess to the Regular Session.

Myrna L. Basich
City Clerk

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